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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/686,206	ROBINSON ET AL.	
	<b>Examiner</b> Scott Christensen	<b>Art Unit</b> 2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 June 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 October 2000 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. This Office Action is in regards to the most recent papers filed on 6/28/2007.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/28/2007 has been entered.

***Drawings***

3. Figures 1, 2a, and 2b should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. It is noted that page 5 of the instant specification specifically refers to figure 2b and "a prior art architecture of the data processing system depicted in figure 2a." Therefore, Figure 2b should be labeled as prior art. As figure 2b is a prior art architecture of the data processing system of figure 2a, it is clear that figure 2a must be a prior art data processing system. As the term conventional is used to describe figure 2a, and figure 2a is a prior art figure, it is clear that "conventional" equates to being prior art. As such, figure 1 (which is clearly, on its face, prior art), which is described as being "conventional" on page 5 is also a prior art figure. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the

page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:

Figure 3: 332;

Figure 4: 461, 462; and

Figure 5: 511, 521, 531, 561, and 562.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 3-6, 8-9, 15, and 17-18 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With regard to claim 3, the instant claim recites, "wherein the 3D computing environment is installed on top of the 2D desktop environment." While the instant specification does describe that the 2D desktop is converted to a 3D desktop, there appears to be no specific disclosure of how the 3D desktop environment is installed with relation to the 2D desktop environment to the degree necessary to provide support for the 3D computing environment to be installed **on top** of the 2D desktop environment.

With regard to claim 4, the instant claim recites, "wherein the 3D computing environment can be deactivated to reinstate the 2D desktop environment." The specification, though, does not appear to describe deactivating the 3D computing environment to reinstate the 2D environment (it is noted though, on page 21, the specification discusses activating a 3D environment or choosing to not activate the 3D environment, but not deactivating the 3D environment to reinstate the 2D environment.).

With regard to claim 5, the instant claim recites, "without displaying the 2D environment." The specification describes on page 11, lines 7-9, describes how the monitor immediately displays the computer desktop as a 3D computing environment, but does not specifically disclose that the 2D environment is not displayed.

With regard to claim 6, the instant claim recites, "installing a software development kit (SDK) within the computer system to enable a user to create a 3D-enabled application to be executed within the 3D computing environment, including 2D or 3D graphics objects to be used in the 3D computing environment." First, it is noted that there does not appear to be a specific disclosure that the SDK is installed within the computer system. The installation within the specification appears to be limited to installing the software to convert the 2D desktop to a 3D computing environment. Furthermore, the SDK does not appear to be specifically disclosed as creating a 3D enabled application that includes 2D or 3D graphics, only that the user can create 3D-enabled applications (see, for example, page 15).

With regard to claim 8, the instant claim recites, "the 3D computing environment is presented as at least one of a room, neighborhood, city, and landscape." However, the phrase "at least one of" does not appear to be supported by the instant specification, as it appears that the original disclosure only describes displaying one of a room, neighborhood, city, and landscape (See, for example, page 12, lines 10-11).

With regard to claim 9, the instant claim recites, "the at least one of a room, neighborhood, city, and landscape." However, the phrase "at least one of" does not appear to be supported by the instant specification, as it appears that the original

Art Unit: 2144

disclosure only describes displaying one of a room, neighborhood, city, and landscape  
(See, for example, page 12, lines 10-11).

With regard to claims 15, 17, and 18, the instant claims are substantially similar to claims 3, 8, and 9, and are rejected for substantially similar reasons.

### ***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 13 recites the limitation "the second Web page" in line 2 of the instant claim. There is insufficient antecedent basis for this limitation in the claim.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-2 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 9 of U.S. Patent No. 7,168,051.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claims 1-4 of the instant application and claims 1 and 9 of Patent 7,168,051 (other than the use of the terms "first computer system" and "first user" without the inclusion of a second computer system or a second user in Patent 7,168,051 as opposed to "a computer system" and "a user" in the instant application.) is **First**, "including displaying at least a portion of the content of the converted web page in a persistent client window of the 3D desktop that is persistent even if a connection between the first computer system and the Internet has been terminated" (as presented in Patent 7,168,051), **Second**, "downloading a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet and executing the 3D development program within the computer system to convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system" (as in the instant application), and **Third**, the user of the term "application program" instead of "Web page" (as in the instant application).

**First**, the ability to navigate to a Web page, and continue to view the single Web page in a browser window is very well known in the art, and has been implemented

before the filing of the instant application in versions of Internet Explorer, Netscape Navigator, and other browsers. When a user connects to a Web page using one of these browsers, the page stays on the screen, even if the user disconnects from the Internet, until the user closes the window. When this functionality is implemented in the invention as claimed in claims 1-2, the 3D environment would download the information for the Web page, and display the Web page until it is navigated away from or closed, even when the connection to the Internet is terminated.

**Second**, the limitation in claims 1 and 2 of the present application of "downloading a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet and executing the 3D development program within the computer system to convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system" amounts to nothing more than downloading the software to perform the remaining steps of the method from a Web server and installing and executing the program to execute the steps. Downloading software from a Web server is very well known in the art to provide a fast and low cost means for distribution of software with options to grant limitations of use on the software until the user pays some sort of licensing fee (i.e. shareware). Further, when software is downloaded, the only way for a user to benefit from the software is to install it on his or her own computer.

**Third**, as in the instant specification on page 16, lines 10-13, an application may exist on a webpage or off, meaning that an application is reasonably interpreted as

being any feature on a web page that is interactive or dynamic in nature (as opposed to static text) or any other program or software. Thus, the difference between a Web page and Application program is not a patentably distinct one, as it is extremely well known in the art to provide interactive or dynamic features on a Web page, which according to the instant disclosure, may be interpreted as being an application.

Accordingly, the claims 1 and 9 of Patent 7,168,051 are obvious in view of the claims 1-2 of the instant application. Furthermore, claims 1-2 of the instant application are obvious in view of claims 1 and 9 of Patent 7,168,051. As such, neither claims 1-2 of the instant application nor claims 1 and 9 of Patent 7,168,051 are patentably distinct, thus claims 1-2 of the instant application are rejected on the ground of nonstatutory obviousness-type double patenting.

#### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 6,088,032 to Mackinlay, hereafter referred to as "Mackinlay."

With regard to claim 1, Mackinlay discloses a method comprising:

providing the 3D computing environment representing a 3D desktop of a computer system in a 3D environment, wherein one or more icons of the 2D desktop

environment are displayed on one or more surfaces of the 3D computing environment (Mackinlay: Figures 2-9 and 13-16 and column 4, lines 43-49 and Figure 2a. It is noted that the documents that are represented in the icons in Mackinlay are icons that are also represented in the 2D desktop environment.);

receiving a two-dimensional application program (Mackinlay: Column 11, line 62 to column 12, line 8. As the environment is being used to perform operations with respect to a web page, the web page must have been received. It is noted that application programs may also be components within the web page, and are thus part of many web pages. Further, according to Mackinlay: Column 7, lines 5-22, pages are interacted with using a browser capable of viewing HTML formatted documents, the browser, itself, also being an application.);

the interpreter dynamically converting the two-dimensional application program to a form usable in the three-dimensional computing environment (Mackinlay: Column 5, lines 41-50); and

presenting the content of the converted application program within the 3D computing environment (Mackinlay: Figures 13 and 14) to allow a user of the computer system to navigate the content of the application program within the 3D computing environment (Mackinlay: Column 11, line 63 to column 13, line 9. The ConeWalker allows users to navigate the web pages.).

Mackinlay does not teach expressly downloading a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet and executing the 3D development program within the computer system to

convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system.

A person of ordinary skill in the art would have known how to perform the steps of downloading a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet and executing the 3D development program within the computer system to convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system.

It is noted that the claim limitations are met by having the software program performing the functionality in the claim (providing the 3D computing environment, receiving a two-dimensional application program, converting the two-dimensional application program, and presenting the content of the converted application program) on a web server, then having the client download the software program (downloading a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet) then installing and running the program to show the 3D desktop environment, where the interpreter is simply a software module within the program (executing the 3D development program within the computer system to convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system.). Downloading software from the Internet, and thus from a Web server, was notoriously well known in the art (see, for example, "CNET: Downloads,"

downloaded from <http://web.archive.org/web/19991008154521/http://download.com/>, posted October 8, 1999, hereafter referred to as "CNET." CNET allows software programs of all types to be downloaded to a user's computer, where the user can then install and run the software program.

It would have been obvious to perform the steps of downloading a 3D (three dimensional) environment development program to a computer system from a Web server over the Internet and executing the 3D development program within the computer system to convert a 2D (two dimensional) desktop environment of the computer system into a 3D computing environment, including installing an interpreter within an operating system of the computer system.

The suggestion/motivation for doing so would have been that providing programs to be downloaded from a Web server to be installed and executed by a user allows the software to be distributed very rapidly to users in a large area. The software can even be a limited version (i.e. shareware) that demonstrates the capabilities of the software, allowing a user to evaluate the software before purchasing a full version of the software from the company, the purchasing of which could either be performed through another download, or a registration key in order to unlock features that were presented in the downloaded version. This gives the user a chance to try a software package that he/she may not have otherwise tried, then purchase the software package.

With regard to claim 3, Mackinlay teaches the invention as substantially claimed except that the 2D desktop environment is an existing desktop environment as a part of

the operating system of the computer system, and wherein the 3D computing environment is installed on the top of the 2D desktop environment.

It would have been obvious to have the 2D desktop environment is an existing desktop environment as a part of the operating system of the computer system, and wherein the 3D computing environment is installed on the top of the 2D desktop environment.

The suggestion/motivation for doing so would have been that most operating systems available at the time of filing of the instant application had a GUI which utilized some sort of 2D desktop (i.e. Windows, several versions of Linux, and Mac OS). Any program installed in one of these operating systems would be installed on top of the 2D desktop environment. Therefore, the program disclosed by Mackinlay would benefit from allowing the claimed functionality, as it is required in order to install in most of the popular operating systems without severely changing the way the operating system functions (i.e. rewriting a significant portion of the code of the operating system itself).

With regard to claim 4, Mackinlay teaches the invention as substantially claimed except that the 3D computing environment can be activated from the 2D desktop environment, and wherein the 3D computing environment can be deactivated to reinstate the 2D desktop environment in response to a user request.

It would have been obvious to allow Mackinly to allow the 3D computing environment to be activated from the 2D desktop environment, and allow the 3D

computing environment to be deactivated to reinstate the 2D desktop environment in response to a user request.

The suggestion/motivation for doing so would have been that allowing the program to utilize Microsoft Windows allows the software to be utilized on the most popular operating system platform. Microsoft Windows allows for programs to be activated, whether the user manually activates the program, or the operating system is set up to automatically start the program. Programs can also typically be deactivated by using code that is typically included in most software programs to allow the program to be deactivated (making the software more user-friendly), using the task manager to force the program to close, and/or using the add/remove programs feature of Microsoft Windows to remove the software from the operating system all together. When any of these functions are performed, the software would be deactivated, reinstating the regular desktop of Microsoft Windows. In this case, activating the software enables the 3D desktop and deactivating the software disables the 3D desktop, returning the user to the 2D desktop.

With regard to claim 5, Mackinlay teaches the invention as substantially claimed except that when the 3D computing environment is activated, the 3D computing environment is automatically presented when the computer system reboots without displaying the 2D desktop environment.

It would have been obvious to have it so that when the 3D computing environment is activated, the 3D computing environment is automatically presented when the computer system reboots without displaying the 2D desktop environment.

The suggestion/motivation for doing so would have been that some of the most popular operating systems allows for software to be automatically started when the computer is booted. For example, Microsoft Windows allows for programs to automatically be started as services, or to be started from the "Startup" folder in the Start menu. The program can either be started up within a window that does not take up the entire screen or in a window that takes the entire screen (or full screen mode). In the latter case, the user has a larger environment to work with, and does not involve displaying the 2D desktop environment (as the entire environment would either be behind the full screen display of the 3D environment or would be not currently activated if the program of Mackinlay is operated as a full screen application).

With regard to claim 6, Mackinlay teaches the invention as substantially claimed except installing a software development kit (SDK) within the computer system to enable a user to create a 3D-enabled application to be executed within the 3D computing environment, including 2D or 3D graphics objects to be used in the 3D computing environment.

It would have been obvious for the user to instal a software development kit (SDK) within the computer system to enable a user to create a 3D-enabled application

to be executed within the 3D computing environment, including 2D or 3D graphics objects to be used in the 3D computing environment.

The suggestion/motivation for doing so would have been that SDKs that can be used for developing 3D applications are well known in the art (i.e. DirectX and OpenGL). These SDKs were available, at the time of the invention, for download and installation, and were used to develop 3D applications. It is noted that the claim language only requires installing an SDK that enables a user to create a 3D-enabled application to be executed within the 3D computing environment, including 2D or 3D graphics objects to be used in the 3D computing environment, meaning that the application never needs to be executed within the 3D computing environment.

With regard to claim 7, Mackinlay teaches that the 3D computing environment is configured to allow a user to place an icon within up to a 360° spatial environment (Mackinlay: Column 3, lines 59-67. It is noted that the only requirement of this claim is that the user be able to place an icon. As the claim states "up to a 360° spatial environment," placing the icon in a two-dimensional image still meets this claim limitation. Mackinlay, though, teaches the ability to place the icon in a 360° spatial environment.).

With regard to claim 8, Mackinlay teaches that the 3D computing desktop environment is presented as at least one of a room, neighborhood, city, and landscape (Mackinlay: Figure 2b).

With regard to claim 9, Mackinlay teaches that the 3D computing environment is configured to allow a user to place an icon on one or more walls of the at least one of a room, neighborhood, city, and landscape via a drag-n-drop operation (Mackinlay: Figure 2b and column 3, lines 59-67. The touch and drop gesture is a drag-n-drop operation.).

With regard to claim 10, Mackinlay teaches receiving a Web page from the Web server over the Internet (Mackinlay: Column 1, lines 41-45);

Mackinlay does not teach expressly determining whether the Web page is a 3D enabled Web page; and presenting the Web page, if the Web page is a 3D enabled Web page, in the 3D computing environment without converting the Web page to a 3D enabled Web page, wherein the conversion is performed only if the Web page is not 3D enabled.

A person of ordinary skill in the art would have known how to determine whether the Web page is a 3D enabled Web page; and present the Web page, if the Web page is a 3D enabled Web page, in the 3D computing environment without converting the Web page to a 3D enabled Web page, wherein the conversion is performed only if the second Web page is not 3D enabled.

It would have been obvious to determine whether the second Web page is a 3D enabled Web page; and present the second Web page, if the second Web page is a 3D

enabled Web page, in the 3D computing environment without converting, wherein the conversion is performed only if the second Web page is not 3D enabled.

The suggestion/motivation for doing so would have been that 3D web pages may be encountered while the user is downloading web pages over the Internet, and the ability to browse these web pages as well as the standard 2D web pages allows immersive three dimensional web pages that can fully utilize the 3D environment of Mackinlay to be viewed. According to Mackinlay, the conversion is only to bring the web page into a suitable format for use in the workspace (Mackinlay: Column 5, lines 39-45). If the conversion operations that are performed on a 2D web page is not necessary, as the web page is already in a format suitable to be viewed in a 3D environment, having the processor perform the same conversion operations as for a 2D web page would not only be rather difficult to perform due to the differing formats, but would be a waste of resources.

With regard to claim 11, Mackinlay teaches that determining whether the Web page is a 3D enabled Web page is performed by the interpreter (Mackinlay: Column 5, lines 37-50). It is noted that the "interpreter," as claimed, can include the software package as a whole, and is not necessarily a specific software module within the program. Therefore, having the functionality performed by the "interpreter" has little weight in the claims as currently presented.).

With regard to claim 12, Mackinlay teaches the invention as substantially claimed except the steps of embedding one or more attributes of the 3D computing environment within the Web page using an XML-based markup language; and presenting the Web page in the 3D computing environment using the embedded one or more attributes of the 3D computing environment by executing the XML-based markup language embedded within the Web page.

A person of ordinary skill in the art would have known how to embed one or more attributes of the 3D computing environment within the Web page using an XML-based markup language; and present the second Web page in the 3D desktop using the embedded one or more attributes of the 3D computing environment by executing the XML-based markup language embedded within the web page.

Evidence of this can be found in "XML (Extensible Markup Language)" posted on Whatis.com on March 25, 1999 and downloaded from <  
<http://web.archive.org/web/20000301052821/http://www.whatis.com/>>, hereafter referred to as "Whatis." Whatis discloses that XML is a flexible way to create information formats and share both the format and the data on the World Wide Web, intranets, and elsewhere (Whatis: Paragraph 1). Embedding an attribute of the 3D computing environment does limit what attribute is embedded. Thus, the attribute could be the format, as described in the XML file. This format information would then be used to present the web page.

It would have been obvious to embed one or more attributes of the 3D computing environment within the Web page using an XML-based markup language; and present

the second Web page in the 3D desktop using the embedded one or more attributes of the 3D computing environment by executing the XML-based markup language language embedded within the web page.

The suggestion/motivation for doing so would have been that "XML is currently a formal recommendation from the World Wide Web Consortium as a way to make the Web a more versatile tool." (Whatis: Paragraph 2) Further, it is expected that XML and HTML will be used together in many web applications (Whatis: Paragraph 2). Thus, it would have been obvious to embed XML in the Web page (which is likely in HTML), and use the values in the XML file to present the Web page.

With regard to claim 13, Mackinlay teaches the invention as substantially claimed except presenting the second Web page as a 2D Web page in a 2D environment without executing the XML-based markup language representing the one or more attributes of the 3D computing environment.

It would have been obvious to present the Web page as a 2D Web page in a 2D environment without executing the XML-based markup language representing the one or more attributes of the 3D computing environment.

The suggestion/motivation for doing so would have been that XML is used to describe content in terms of what data is being described (Whatis: Paragraph 2). Further, the application on the receiving computer can determine how to handle the data described in the XML file. In this case, if code that is only usable by a 3D

environment is presented in the XML document, the application of a computer in a 2D environment would not be able to execute the corresponding code.

With regard to claim 14, Mackinlay teaches navigating via the 3D computing environment content stored in the computer system (Mackinlay: Column 5, lines 59-60 and Figure 1. The external storage is part of the computer system, as shown in figure 1, and may store the documents that are to be navigated via the 3D desktop.).

With regard to claims 2 and 15-20, the invention claimed is substantially similar to the invention claimed in claims 1, 3, and 7-11, respectively, and are rejected for substantially similar reasons.

#### ***Response to Arguments***

#### **Objections to the Claims**

13. Applicants amendments filed on 6/28/2007 have overcome the objections to the claims as presented in the Office Action mailed 5/14/2007.

#### **Obvious Type Double Patenting**

14. Claims 1-4 were rejected in the Office Action mailed 5/14/2007. The amendments, having very substantially amended claims 3 and 4 have rendered the obvious type double patenting rejections of claims 3 and 4 moot, though for the

reasoning as stated above in the Double Patenting rejections, claims 1 and 2 stand rejected on the ground of obvious type double patenting.

### **Rejections under 35 USC 102 and 35 USC 103**

15. Applicant's arguments filed 6/26/2006 have been fully considered but they are not persuasive.

On page 11 of Applicant's remarks, Applicant argues that Mackinlay's 3D document workspace is not the same as a 3D desktop environment. Applicant further argues that the 3D desktop environment does not convert or replace the existing desktop of an operating system, as required by claim 1 of the present application. First, it is noted that claim 1 never states that the desktop of the operating system is converted to a 3D desktop environment, only that the interpreter is installed within an operating system. The 2D desktop, as in claim 1, is also never claimed as being the 2D desktop of the operating system, only a 2D desktop environment of the computer system.

Further, the 3D environment of Mackinlay is a 3D desktop environment, as demonstrated by the whatis.com article, "desktop," posted on the Internet October 12, 1999, and downloaded from

<http://web.archive.org/web/20000301052821/http://www.whatis.com/>. According to the desktop article, "a desktop is a computer display area that represents the kinds of objects one might find on a real desktop: documents, phonebook, telephone, reference sources, writing (and possibly drawing) tools, project folders" (Whatis desktop article:

Paragraph 1). Using this definition, it is clear that a workspace as disclosed by Mackinlay is a desktop.

It is further noted that the phrase "convert a 2D...desktop environment of the computer system into a 3D computing environment..." is different than converting a 2D desktop to a 3D desktop, as the term "environment" makes it appear that the desktop environment does not encompass only the desktop, but the entire environment (for example, if the 2D desktop environment is in Microsoft Windows, the desktop as well as any windows would be included in the desktop environment.). Desktop environment, as claimed, appears have the broadest reasonable interpretation from a person of ordinary skill in the art as being a computing environment that includes a desktop, not the desktop itself. Therefore, it is clear that Mackinlay replaces the 2D desktop environment with a 3D desktop environment, where the replacement can also be a conversion, as many of the files accessible through the 3D desktop environment were accessible through the 2D desktop environment.

Applicant further argues on page 11 that Mackinlay's workspace is not downloaded from a Web server, particularly to convert or replace the existing desktop as part of the operating system. Applicant further argues that Mackinlay does not teach or suggest this feature, and that it would be impossible hindsight to use Applicant's own disclosure against the Applicant. In response to this, Examiner has provided a copy of a page from CNET Download.com, and discussed the paper in the body of the rejection of claim 1 under 35 USC 103. Applicant has provided no evidence that it is not known

Art Unit: 2144

to a person of ordinary skill in the art to download software from a Web server, then execute the software. As CNET shows, many types of software were available to be downloaded on or before October 8, 1999.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Christensen whose telephone number is (571) 270-1144. The examiner can normally be reached on Monday through Thursday 6:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vaughn William can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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